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Rio Declaration on Environment and Development: application and implementation

Report of the Secretary-General

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INTRODUCTION

1. The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, adopted three instruments: the Rio Declaration on Environment and Development (the Rio Declaration); Agenda 21; and the Non-Legally Binding Authoritative Statement of Principles For a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (the Forest Principles). In addition, two treaties were opened for signature at the Conference: the Convention on Biological Diversity[1] and the United Nations Framework Convention on Climate Change.[2]

2. The Rio Declaration contains a preamble and 27 principles, which aim to guide the international community in its efforts to achieve sustainable development. It reaffirms and seeks to build upon the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, hereinafter referred to as the Stockholm Declaration.

3. The General Assembly in its resolution 47/190 of 22 December 1992 endorses the Rio Declaration and urges that the necessary action be taken to provide effective follow-up. In resolution 47/191 it recommends that the Commission on Sustainable Development promote the incorporation of the principles of the Rio Declaration on Environment and Development in the implementation of Agenda 21. In resolution 49/113 of 19 December 1994, it urges all Governments to promote widespread dissemination at all levels of the Rio Declaration and requests the Secretary-General to ensure that its principles are incorporated in the programmes and processes of the competent bodies and organs of the United Nations system.

4. In resolution 51/181 of 16 December 1996 the General Assembly invites the Secretary-General to provide for the 1997 special session on the overall review and appraisal of Agenda 21 "information on the application of the principles contained in the Rio Declaration" and decides to consider "the application of the principles of the Rio Declaration at all levels - national, regional and international - and to make relevant recommendations thereon".[3]

5. The present report examines progress in the application and implementation of the principles of the Rio Declaration,[4] focusing on the period 1992-1996. It takes the Rio Declaration as a starting point. The report does not attempt to provide a comprehensive overview but rather gives an indication of the status of incorporation of the principles of the Rio Declaration into national and international law. The examples given are used to illustrate some of the ways in which the principles have been applied or implemented. In particular, at the national level, the report provides illustrations rather than comprehensive information. In May 1996, the Ministry of Housing, Spatial Planning and the Environment of the Netherlands organized a meeting on the codification of the Rio Principles in national legislation, the results of which were an important source for this report.

6. The legal status of each of the principles varies considerably. Some are firmly established in international law, while others are only in the process of gaining acceptance. Some principles appear in global or regionally binding

instruments, while others can only be identified in soft-law instruments. It is difficult in many cases to establish the parameters or the precise legal status of each principle. The manner in which each principle applies to a particular activity or incident would have to be considered in relation to the facts and circumstances of each case, taking account of various factors, including its sources and textual context, its language, the particular activity at issue, and the particular circumstances in which it occurs, including the actors and the geographical region.

7. In regard to the nature of the principles, two different types can be determined. Some are of a procedural nature, such as principle 17 on environmental impact assessment, whereas others are of a more substantive nature, such as principle 2 on the duty not to cause transfrontier environmental harm. Procedural principles are often translated into specific procedural provisions in national legislation. On the other hand, substantive principles are explicitly incorporated in national laws or regulations, establishing general obligations for Governments and/or citizens.

8. Some of the principles were already frequently appearing in national and/or international law at the time of the Conference. Others were newly formulated and represented more recent concepts. Both categories of principle were incorporated into the instruments adopted at the Conference. Many of the principles are prominent in the two treaties opened for signature. Since the Conference, considerable activity has taken place in the application and implementation of, in particular, international environmental law, where some important binding instruments have been negotiated, adopted or entered into force.

9. In the present report, the main focus is on the international instruments adopted at the Conference and on major conventions adopted or having entered into force since then, such as the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, hereinafter referred to as the Desertification Convention;[5] the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, hereinafter referred to as the 1995 Agreement on Fish Stocks;[6] and the United Nations Convention on the Law of the Sea, hereinafter referred to as UNCLOS.[7] The principles are also frequently taken into account in ongoing negotiations of new international legal instruments. Their repeated inclusion and confirmation, even if sometimes differently worded, affirms their continuous support by the international community.

10. Besides binding instruments, many of the principles of the Rio Declaration are included in instruments adopted at major intergovernmental conferences held since 1992: the World Conference on Human Rights (Vienna, 1993); the International Conference on Population and Development (Cairo, 1994); the World Summit for Social Development (Copenhagen, 1995); the Fourth World Conference on Women (Beijing, 1995); the United Nations Conference on Human Settlements (Istanbul, 1996); and the World Food Summit (Rome, 1996).

11. In some instances, national implementation of the principles of the Rio Declaration is directly related to a State's implementation of and compliance with binding international instruments - i.e., principles which apply as a matter of treaty law. The requirement to undertake environmental impact assessments for certain activities on the national level, as stipulated in principle 17, is, for example, an obligation of the Parties to the Convention on Biological Diversity, which are to introduce appropriate procedures requiring environmental impact assessment, as provided for in article 14.1 (a) of the Convention.

12. Not all of the principles have the same significance for national legislation. Some call for action primarily on the international level, and therefore no national examples are mentioned (principles 2, 6, 12, 23, 24, 25, 26 and 27). Other principles - for example, 10, 11, 13, 16 and 17 - imply actions specifically at the national level. Some principles are more in the nature of guidelines or policy directives which do necessarily give rise to specific legal rights and obligations. For instance, principles 5, 22 and 25 may be implemented in national sectoral laws; however, they are more often reflected in national policies or are incorporated in national strategies and national (environmental) action plans.

13. Considerable progress in implementing certain principles has been achieved, especially during the past two years. Although such progress at the national level cannot be solely attributed to the incorporation of the principles in the Rio Declaration, their recognition in that context can serve as a stimulus for action. Recent reviews and adaptations of pre-Conference national legislation are repeatedly based on and inspired by the concept of sustainable development.

14. As a result of the differences among national legal systems, the techniques of implementation vary from State to State. Many States incorporate principles as embodied in the Rio Declaration into national legislation by means of either constitutional provisions or general provisions in sectoral laws or regulations. A different approach is to adopt provisions in national laws or regulations that reflect a specific principle in a substantive manner without explicitly referring to it as a principle. Moreover, in an increasing number of cases national courts refer to a principle in the Rio Declaration, sometimes explicitly citing it.

15. The present report will proceed to consider each principle of the Rio Declaration separately. However, it is understood that all of the principles are interlinked and of an interdependent nature, and that the Rio Declaration represents a carefully negotiated package.

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

International developments

16. Principle 1 emphasizes the conviction of States that human beings are at the centre of environment and development and reflects, thus, an anthropocentric approach. Principle 1 reflects the fundamental human right to a life with dignity. All other principles of the Rio Declaration are construed so as to give effect to this principle. Principle 1 is also concerned with human health, an aspect elaborated in chapter 6 of Agenda 21, paragraph 1 of which states "health and development are intimately interconnected ... Agenda 21 must address the primary health needs of the world's population, since they are integral to the achievement of the goals of sustainable development and primary environmental care". Paragraph 6.40 states "The overall objective is to minimize hazards and maintain the environment to a degree that human health and safety is not impaired or endangered and yet encourage development to proceed."

17. The right to a healthy environment has been frequently referred to, though often in non-legally binding instruments, and is often explicitly guaranteed and proclaimed in human rights treaty law. Since 1992, principle 1 has been recognized in treaty law, sometimes with reference to specific sectors. Examples are preambular paragraph 1 of the Desertification Convention and the Fourth Lomé Convention which states that "cooperation shall be directed towards development centres on man, the main protagonist and beneficiary of development".[8]

18. The Programme of Action of the International Conference on Population and Development contains 14 principles, hereinafter referred to as the 1994 Cairo Principles.[9] Principle 2 states: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. People are the most important and valuable resource of any nation. Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have a right to an adequate standard of living for themselves and their families, including adequate food, clothing, water and sanitation." See also paragraph 7 of the 1996 Istanbul Declaration on Human Settlements, hereinafter referred to as the Istanbul Declaration.[10]

National implementation and examples

19. The right to a healthy and productive life in harmony with nature is often found in constitutions and/or basic (environmental) laws, formulated as a general principle of national environmental legislation. Almost all constitutions adopted or revised in the past 35 years address environmental concerns.[11] Constitutional provisions in a great number of States explicitly enunciate a right to a healthy environment.[12] Correspondingly, almost all of the constitutions provide both an obligation of the State to conserve, and a duty of the citizens to protect, the environment. The constitutional obligation on the part of the State to conserve the environment corroborates the right to a healthy environment that is in some cases formulated in terms of an individual's right to a healthy environment.

20. The Supreme Court of the Philippines decided that while the right to a balanced and healthful ecology is to be found under the Declaration of

Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation [...] the advancement of which may even be said to predate all Governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind.[13]

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

International developments

21. Principle 2 comprises two elements which cannot be separated without fundamentally changing their sense and effect: the sovereign right of States to exploit their own natural resources; and the responsibility, or obligation, not to cause damage to the environment of other States or areas beyond the limits of national jurisdiction. It is a well-established practice, accepted as law, that - within the limits stipulated by international law - every State has the right to manage and utilize natural resources within its jurisdiction and to formulate and pursue its own environmental and developmental policies. However, States have an obligation under international law (e.g., UNCLOS, part V) to conserve and utilize their natural resources in a sustainable manner and share underutilized resources with neighbouring and less advantaged States. States also have an obligation to protect their environment and prevent damage to neighbouring environments.

22. The Rio Declaration affirmed principle 21 of the Stockholm Declaration with one addition: "and developmental". Principle 2 is reflected in, for example, preambular paragraph 8 of the Convention on Climate Change, preambular paragraph 15 of the Desertification Convention, and in the preamble of the North American Agreement on Environmental Cooperation.[14] Except for the words "and developmental", principle 2 is reiterated in article 3 of the Convention on Biological Diversity. Article 15.1 of that Convention recognizes that States have sovereign rights over their natural resources and that "the authority to determine access to genetic resources rests with the national governments and is subject to national legislation". Principle 21 of the Stockholm Declaration is also included in principle 1 (a) of the Forest Principles, whose principle 2 (a) declares: "States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development ...".

23. The exact scope and implications of principle 2 are not clearly determined yet. Certainly not all instances of transboundary damage resulting from

activities within a State's territory can be prevented or are unlawful. Further, there is a discernable tendency to impose duties on States with respect of the management of their natural wealth and resources so as to ensure sustainable production and consumption, in the interest of the peoples of their own and other States and of humankind, including future generations. There is an emerging recognition that problems are of international, if not global, concern. This was expressed in the 1995 Agreement on Fish Stocks. The International Court of Justice Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons of 8 July 1996 confirms that principle 2 restates a rule of customary law, observing that the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

International developments

24. The inclusion of principle 3 in the Rio Declaration represents the first time that the right to development has been affirmed in an international instrument adopted by consensus.[15] The nature and the extent of the right is left open, as is the question of whether such a right attaches to States, peoples or individuals. Principle 3 may be read together with the ensuing principle 4 to indicate that the right to development may include both environmental and economic considerations.

25. The right to development might be perceived as a synthesis of existing human rights, as the right to an adequate living, the highest attainable level of health, education, housing, work and food. "Underlying the links between the right to development and the right to the environment is the notion of the indivisibility and interdependence of all human rights, whether civil or political, economic, social or cultural. Moreover, it is impossible to separate the claim to the right to a healthy and balanced environment from the claim to the right to 'sustainable' development, which implies a concentration of efforts to combat poverty and underdevelopment." "A development strategy that does not take into account the human, social and cultural dimension could have only adverse effects on the environment."[16]

26. After the adoption in 1986 of the Declaration on the Right to Development,[17] the World Conference on Human Rights adopted the Vienna Declaration.[18] In 1993 the General Assembly decided that the High Commissioner for Human Rights shall recognize "the importance of promoting a balanced and sustainable development for all people and of ensuring realization of the right to development, as established in the Declaration on the Right to Development".[19] In November 1996, the first session of the newly appointed intergovernmental Working Group of Experts on the Right to Development was held.

27. Principle 3 of the 1994 Cairo Principles states: "The right to development is a universal and inalienable right and an integral part of fundamental human rights ...".[9] The Platform for Action of the Fourth World Conference on Women, hereinafter referred to as the 1995 Beijing Platform for Action,[20] and the Copenhagen Declaration on Social Development, hereinafter referred to as the 1995 Copenhagen Declaration,[21] also include various references to the right to development.

28. Besides the right to development, intergenerational equity is also addressed by principle 3. This is directed at assuring the availability of multiple development options for future generations. For example, the 1996 Istanbul Declaration states, in paragraph 10: "In order to sustain our global environment ... we commit ourselves to ... the preservation of opportunities for future generations ...". The Framework Convention on Climate Change refers in article 3.1 to intergenerational equity, as does the last preambular paragraph of the Convention on Biological Diversity.

National implementation and examples

29. On the national level the right to development relating to the rights of future generations is occasionally found in programmatic provisions in constitutions and basic (environmental) laws. For example, the Constitution of Uganda, adopted 27 September 1995, stipulates that the utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans ...".[22] In Belgium, the introductory considerations of the Royal Decision of 12 October 1993, which established the National Council for Sustainable Development, refer explicitly to the Rio Declaration. Article 1 of the Royal Decree, defining sustainable development, declares that today's development shall not take away from the future generations the chance to supply their own needs.

30. In a few court cases before national courts, reference has been made to the right of future generations. The Supreme Court of the Republic of the Philippines decided, in the Minors Oposa case, that the petitioners could file a class suit, for others of their generation and for the succeeding generations.[13] The Court, considering the concept of intergenerational responsibility, further stated that every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

International developments

31. Principle 4 reflects the emphasis on integration, interrelation and interdependence of environment and development, which form the backbone of sustainable development. It reflects the interdependence of the social,

economic, environmental and human rights aspects of life that define sustainable development. The principle demonstrates a commitment to moving environmental considerations and objectives from the periphery of international relations to its economic core.

32. Environmental considerations are increasingly a feature of international economic policy and law. There are numerous regional and global treaties supporting an approach which integrates environment and development, such as the Convention on Biological Diversity and the Desertification Convention.[23] Paragraph 6 of the 1995 Copenhagen Declaration provides that "... economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people".

National implementation and examples

33. The integration of environmental concerns into national development decision-making requires the consideration of environmental, social and economic components in an integrated manner at all levels of national legislation and administration. Some examples of domestic legislation contain references to or are based on an holistic approach, as anticipated in principle 4 - for instance, the Environment Management Bill of Malawi, adopted in June 1996, the Law on Sustainable Development of Estonia, passed in early 1995, and the draft environmental protection act of Nepal, which is currently under consideration by the Parliament.

34. The principle of integration of environmental matters into all policy areas is usually formulated as a procedural rule to be applied by legislative and administrative bodies. Therefore it is also a fundamental postulate of most of the national strategies for sustainable development and of some development plans.

35. In the White Oak Statement of 22 February 1993, ministers of environment and environmental officials from 21 new democracies in Central and Eastern Europe and the former Soviet Union recognized that environmental factors must be integrated into the fabric of economic decision-making at all levels in support of a programme of sustainable development.[24]

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

International developments

36. At the World Summit for Social Development, 117 Heads of State agreed to an integrated approach to poverty eradication, based on the concept of partnership within societies and between developed and developing countries. The Copenhagen Declaration and Programme of Action embody commitments and measures at both the

national and international level to stimulate growth, trade, and full, productive and freely chosen employment, to improve health, community and education systems, and to ensure that official development assistance goes where it is needed most: to meeting basic human needs in the world's poorest countries. The Declaration includes a commitment to the goal of eradicating poverty in the world, through decisive national actions and international cooperation, as an ethical, social, political and economic imperative of humankind.

37. Chapter 3 of Agenda 21 is dedicated to combating poverty. References to the eradication of poverty are also made in the other instruments adopted at the Conference: preambular paragraph 19 and article 20 (4) of the Convention on Biological Diversity; article 4.7 of the Convention on Climate Change; and principle 7 of the Forest Principles. Further, preambular paragraph 8 and article 4.2 (c) of the Desertification Convention make reference to poverty. The Convention seeks to combine the alleviation of poverty with the restoration of an agro-ecological balance, thus creating the potential for direct and early benefits to people living in the world's drylands. Another example is the Washington Declaration on Protection of the Marine Environment from Land-based Activities, hereinafter referred to as the Washington Declaration,[25] which states that the alleviation of poverty is an essential factor in addressing the impacts of land-based activities on coastal and marine areas. The 1995 Beijing Platform for Action recognizes the persistent and increasing burden of poverty on women as a critical area of concern and emphasizes the "feminization of poverty";[26] the World Food Summit Plan of Action states that poverty eradication is essential if access to food is to be improved.

National implementation and examples

38. The principle of eradication of poverty can be implemented in various sectors of national legislation - e.g., laws regarding employment creation and land-use planning, labour laws, social security and health care laws, and regulations concerning education. In only a few provisions is explicit reference to the principle of eradication of poverty made.

39. States can use different approaches to combating poverty through their national legislation. By way of illustration, in Myanmar, the Forest Law of November 1992 stipulates that the Law shall be implemented in accordance with the following basic principles: ... (d) To develop the economy of the State, to contribute towards the food, clothing and shelter needs of the public and for the perpetual enjoyment of benefits by conservation and protection of forests.[27]

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

International developments

40. The special situation and needs of developing countries are in some respects elaborated in other principles of the Rio Declaration, since the special situation and needs of developing countries may lead to differentiated responsibilities (principle 7) and to financial and technical assistance (principles 9 and 11). The principle of the special treatment of developing countries finds its elaboration in the idea of global partnership and in the recognition of differentiated responsibilities among countries. Their distinct position necessitates the transfer of technology and financial resources to them and the strengthening of capacity-building within them. There is a trend in treaties in the field of sustainable development to make provision for a flow of financial resources from industrialized countries to developing countries with a view to enabling them to fulfil their obligations under such agreements.

41. The Convention on Climate Change refers in article 3.2 to the "specific needs and special circumstances" of developing countries, and article 3.4 states that "policies and measures ... should be appropriate for the specific conditions of each Party and should be integrated with national development programmes".[28] The Convention on Biological Diversity, in article 20.5, states that "(t)he Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology".[29] Under both the Conventions, implementation in developing countries is contingent upon the fulfilment on the part of industrialized countries of their obligations relating to financial resources and technology transfer.

42. UNCLOS recognizes in its preamble the special interests and needs of developing countries. The Desertification Convention includes relevant references in its preamble and articles 3 (d), 5 and 6 and emphasizes throughout the special situation of developing countries, given their high concentration - notably, the least developed - among those experiencing serious drought and/or desertification. Part VII of the 1995 Agreement on Fish Stocks is devoted to the special requirements of developing States in relation to the conservation and management of the fish stocks concerned, and article 26 envisages the establishment of special funds to assist developing States in its implementation.

43. The 1995 Washington Declaration refers to "countries in need of assistance" (para. 4), a group which comprises the least developed countries, countries with economies in transition and small island developing States. Principle 9 (a) of the Forest Principles also refers to developing countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable

development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

International developments

44. Principle 7 can be divided into two parts: the duty to cooperate in a spirit of global partnership; and common but differentiated responsibilities. The first is well-established, as exemplified in chapter IX of the Charter of the United Nations, and applies on the global, regional and bilateral levels. The goal of the Rio Declaration is, according to its preamble, the establishment of a "new and equitable global partnership". The principle of global partnership can be seen as a more recent reformulation of the obligation to cooperate, and is becoming increasingly important.[30] Principle 7 refers to States, but the principle of global partnership may also be extended to non-State entities. The notion of common concern of humankind recognizes the legitimate interest of the international community to concern itself with certain issues and values which, by their nature, affect the community as a whole.[31]

45. Principle 7 also speaks of common but differentiated responsibilities.[32] This element is intended to promote a sense of partnership between industrialized and developing countries in dealing with environmental issues. There is the need to take account of differing circumstances, particularly in each State's contribution to the creation of environmental problems and its ability to prevent, reduce and control them. Because of these different contributions, States have common but differentiated responsibilities. States whose societies impose a disproportionate pressure on the global environment and which command high levels of technological and financial resources bear a proportionally higher degree of responsibility in the international pursuit of sustainable development.

46. Differentiated responsibilities may result in different legal obligations. In practical terms, the principle of common but differentiated responsibilities is translated into the explicit recognition that different standards, delayed compliance timetables or less stringent commitments may be appropriate for different groups of countries, to encourage universal participation. The developed countries acknowledge their responsibility because of the pressure on the global environment, and because of the technologies and financial resources they command. A number of international agreements recognize a duty on the part of industrialized countries to contribute to the efforts of developing countries to pursue sustainable development and to assist developing countries in protecting the global environment. Such assistance may entail, apart from consultation and negotiation, financial aid, transfer of environmentally sound technology and cooperation through international organizations.

47. In article 4.1 the Convention on Climate Change recognizes the special circumstances and needs of developing countries and then structures the duties and obligations to be undertaken by States accordingly. The idea of common but differentiated responsibilities and respective capabilities is stated in article 3 as the first principle to guide the Parties in the implementation of the Convention. Article 12 allows for differences in reporting requirements. The provisions of the Convention on joint implementation [art. 4.2 (a)(b)] and

guidance provided on the issue by its Conference of the Parties are also of relevance. The Convention on Biological Diversity has made the implementation of obligations undertaken by developing countries dependent on the commitments of developed countries to provide new and additional financial resources and to provide access to and transfer of technology on fair and most favourable terms. The principle is endorsed in the preamble of the Convention and is implicitly reflected in various other provisions to safeguard the special interests and circumstances of developing countries.[33]

48. The Desertification Convention contains specific obligations for affected country parties (art. 5) and recognizes additional responsibilities for developed country parties (art. 6). Article 26 of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, hereinafter referred to as the 1996 Protocol to the London Dumping Convention,[34] creates the opportunity for Parties to adhere to an adjusted compliance time schedule for specific provisions. The idea of common but differentiated responsibilities can be seen as the main idea behind the Fourth APC-EEC Convention of Lomé.[35]

49. The notion of common but differentiated responsibilities is referred to in the implementation of Agenda 21,[36] and has also been affirmed in the major international conferences since Rio. For example, in paragraph 28, the 1995 Copenhagen Declaration recognizes "... that the formulation and implementation of strategies, policies, programmes and actions for social development are the responsibility of each country and should take into account the economic, social and environmental diversity of conditions in each country ...".

National implementation and examples

50. The principle of common but differentiated responsibility has not been reflected, per se, in national legislation, as far as can be determined. However, it is often reflected in national policies on international cooperation and on foreign aid.[37]

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

International developments

51. Principle 8 embodies two fundamental requirements in order to achieve sustainable development. It reaffirms principle 1, by stating that the ultimate goal is a higher quality of life for all people; there is also a relationship with principle 7. Principle 8 represents an area where the concept of common but differentiated responsibilities is clearly applicable, since unsustainable production and consumption patterns are generally found in developed countries, while in contrast, developing countries tend to have a greater rate of increase in population levels.

52. Principle 8 reflects this balanced approach. Regarding consumption and production patterns, progress has been achieved mainly at the national level.[38] At the international level, the issue can be linked with energy use and emissions, water, food, forest products, waste, etc.[39] The reduction and elimination of unsustainable production and consumption patterns has been reaffirmed in, inter alia, paragraph 10 of the 1996 Istanbul Declaration.

53. Appropriate demographic policies are considered to be the individual goal of each State. The Programme of Action of the International Conference on Population and Development is the most important document illustrating international developments on demographic policies. Its principle 6 states "Sustainable development as a means to ensure human well-being, equitably shared by all people today and in the future, requires that the interrelationships between population, resources, the environment and development should be fully recognized, properly managed and brought into harmonious, dynamic balance. To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate policies, including population-related policies, in order to meet the needs of current generations without compromising the ability of future generations to meet their own needs."

National implementation and examples

54. States have taken various legislative measures to implement the principle of changing production and consumption patterns. Some States have adopted laws and regulations which contain regulatory, economic (cf. principle 16) and social instruments and provide for, inter alia, environmental taxation, including differentiated energy taxes, eco-labelling, eco-audit procedures,[40] product charges and pollution fines, emission standards and emission trading schemes, recycling regulations, and the use of environmental management systems.[41]

55. The assessment of environmental implications of existing tax and incentive schemes is crucial, in particular the review of economic sectoral policies to ensure that subsidies do not support unsustainable patterns of consumption and production. Recently, Germany adopted a so-called "eco-cycle law",[42] which integrates product responsibility into economic decision-making and aims at the avoidance of waste at producer, dealer and consumer levels.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new innovative technologies.

International developments

56. Principle 9 is elaborated through, inter alia, provisions in international legal instruments on the exchange of information and knowledge and through transfer of technology. The general obligation to exchange information is

found, in one form or another, in many international agreements, especially those in the field of the environment. The sometimes limited effectiveness of general obligations on information exchange is due in large part to the reluctance of States to share information which might have commercial value and the obligation to ensure respect for intellectual property rights. In recent years several international legal instruments have established detailed rules on the type of information to be exchanged. An innovative approach to information exchange is included in article 4.1 (h) of the Convention on Climate Change and article 17 of the Convention on Biological Diversity. The 1995 Agreement on Fish Stocks sets out in its annex I standard requirements for the collection and sharing of data concerning fisheries activities. It provides that the confidentiality of non-aggregated data should be maintained.

57. Regarding the transfer of technologies,[43] it is left to specific treaty arrangements to translate the objectives into the actual transfer, and sometimes development, of technology. See, for example, article 13 of the 1996 Protocol to the London Dumping Convention, on technical cooperation and assistance to those countries that request it. Article 14, on scientific and technical research, states in paragraph 2 that Contracting Parties shall promote the availability of relevant information to other Contracting Parties who request it. The Convention on Biological Diversity in its article 16 defines that access to and transfer of technology, including biotechnology, are "essential elements for the attainment of the objectives" of the Convention. The terms of technology transfer have been defined in such a way as to secure not only the conservation of biological diversity but also sustainable development interests, particularly those of developing countries. See further article 4.5 of the Convention on Climate Change; paragraph 13 of the 1996 Istanbul Declaration; and principle 11 of the Forest Principles.

National implementation and examples

58. At the national level, the promotion of the development and the use of environmentally sound technologies can, inter alia, be achieved by regulations which provide for incentive systems and funding of technological innovation in the field of environmental technology[44] or by providing relevant information and know-how. In the European Union, Council Directive 96/61/EC contains an integrative concept for pollution prevention and control, introducing, inter alia, a system of integrated permits which includes emission limit values based on best available techniques. For the determination of those techniques, the technological advances and changes in scientific knowledge and understanding have to be taken into account, thus enhancing the development and diffusion of new technologies.[45]

59. In several countries eco-funds and similar institutions have been established to promote environmental investments and to finance projects relevant for the enhancement of the environment, such as water infrastructure projects.[46]

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

International developments

60. Principle 10 combines public participation with public access to information and access to remedial procedures. According to Agenda 21, one of the fundamental principles for the achievement of sustainable development is broad public participation in decision-making.[47] Both Agenda 21 and the Rio Declaration emphasize the importance of the participation of all major groups, and special emphasis has been given, including in legally binding international instruments, to ensuring participation in decision-making of those groups that are considered to be politically disadvantaged, such as indigenous peoples[48] and women.[49] Principle 10 supports a role for individuals in enforcing national environmental laws and obligations before national courts and tribunals.[50]

61. The Convention on Climate Change obliges Parties to promote public awareness and to encourage wide participation in the process, including that of non-governmental organizations, though it does not create a public right of access to information.[51] The Desertification Convention recognizes, in article 3 (a)(c), the need to associate civil society with the action of the State. See also article 12 of the 1995 Agreement on Fish Stocks. More commonly, international legal instruments addressing access to information and public participation are confined to distinct contexts, such as environmental impact assessment. For example, the Convention on Biological Diversity allows for public participation in environmental impact assessment procedures in article 14.1 (a); its article 13 addresses the need for public education and awareness.

62. The Vienna Declaration places particular emphasis on participatory democracy. See also principle 26 (m)-(o) of the 1995 Copenhagen Declaration. Chapter 29 of Agenda 21 states that public participation also implies freedom of association for workers and employers and democratization towards their full involvement in decision-making on social and development issues. This approach to labour and social issues is described in the ILO Constitution and numerous ILO conventions. More generally, the independence of non-governmental organizations was also recognized in paragraph 27.1 of Agenda 21 as a "precondition" of real participation.

63. International institutions must also implement open and transparent decision-making procedures that are fully available to public participation. Examples of this include the World Bank Inspection Panel, which provides groups affected by World Bank projects the opportunity to request an independent

inspection into alleged violations of Bank policies and procedures. The petitioning process as included in articles 14 and 15 of the North American Agreement on Environmental Cooperation also provides significant new rights for citizens to participate in monitoring domestic enforcement of environmental laws. Non-governmental organizations should be provided at least observer status in international institutions and treaties and should be relied upon for expertise, information and other purposes.[52] Work on a regional draft convention on public participation in environmental decision-making is currently in progress within the Economic Commission for Europe.

National implementation and examples

64. The principle of public participation is at the heart of implementation of sustainable development at the national level. The effectiveness of participation rights critically depends, first, on appropriate access to relevant information, which is often permitted through a right to request relevant data, primarily where environmental matters are concerned. Secondly, it depends on access to judicial remedies and means of redress, mostly as public interest litigation, either in the form of class actions or by standing rights or rights of intervention.

65. In Colombia, for instance, Law 99 of 1993 regulates the participation of citizens in exercising their environmental rights and in defending natural resources. Any citizen may intervene in administrative proceedings on the issuance, modification, or cancellation of permits and environmental licences. Public hearings, the right to request information, court actions and extrajudicial settlement for citizens are introduced. Additionally, citizens can file suit to force government officers to comply with an environmental law.[53]

66. In many countries public participation rights are granted through environmental impact assessment procedures with broad public participation or in various sectoral laws adapted to the special circumstances of each sector. In the Czech Republic, for example, the constitutional right to obtain information about the state of the environment and the right to enforce this and other environmentally related rights are implemented in various sectoral laws, inter alia, through the Environmental Protection Act 1992, the Nature and Landscape Protection Act 1992, the Clean Air Act 1991, and the Environmental Impact Assessment Act, the latter providing the most thorough procedure for public participation.[54]

Principle 11

States shall enact effective environment legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

International developments

67. Principle 11 is almost an exact rendering of preambular paragraph 10 of the Convention on Climate Change and is reflected in UNCLOS.[55] In most cases, such enactment of national legislation must be no less effective than agreed international rules and standards. Principle 11 underscores the fact that, while international treaties are needed to address problems of global magnitude in the international legal context, to achieve their objectives, action must take place at the national level. The principle emphasizes the duty of States to implement at the national level the international obligations they have accepted in the field of the environment.

National implementation and examples

68. In most States, new environmental laws have been adopted or existing regulations amended since the United Nations Conference on Environment and Development. While the examples are too numerous to be listed in this report, it can be noted that new legislation is established either in the form of environmental framework laws, providing a rather general approach for environmental protection[56] and/or in the form of sectoral laws that deal with specific environmental issues in detail[57] and can specify provisions of general environmental protection laws for certain aspects.

69. In order to assist the development of national environmental legislation and institutions, capacity-building and financial support for developing countries and countries with economies in transition are more than ever a crucial and major concern. In recent years, reviews of existing or drafting of new environmental legislation and the training of legal advisers and the strengthening of institutions were carried out with support of various international organizations in many States in all regions of the world.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

International developments

70. In general, there is a tendency to remove or avoid unilateral environmental measures. However, while they are not specifically prohibited by the Rio Declaration or Agenda 21, they are bounded by various criteria and provisos. In spite of free market mandates,[58] trade restrictions for environmental purposes have at times been used to restrict markets for environmentally hazardous products and for items produced unsustainably.[59] Besides principle 12, three

other instruments adopted at the United Nations Conference on Environment and Development contain provisions related to the possible permissibility of unilateral environmental measures. The most detailed is the consensus language in paragraph 39.3 (d) of Agenda 21. Further, the Convention on Climate Change states, in article 3.5, that measures to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on international trade. Similar statements are found in principles 13 and 14 of the Forest Principles.

71. The extraterritorial application of national environmental laws is particularly controversial in relation to trade issues. The subject of the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements, has been under consideration for a number of years, notably within the context of GATT and the World Trade Organization (WTO). Currently, WTO's Committee on Trade and Environment is seized of the matter. It prepared a report to the first biennial meeting of the WTO Ministerial Conference (Singapore, December 1996).[60]

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

International developments

72. International law remains inconclusive as to the standard of care to be observed in fulfilling international environmental obligations. Regarding State liability, developments have been limited since 1992. The question of international liability for the injurious consequences of acts not prohibited under international law is among the subjects under discussion in the International Law Commission (ILC)[61] and the General Assembly. There the opinion is expressed that environmental dangers to which humanity is exposed as a result of activities not prohibited by international law made it necessary to develop commonly accepted legal rules on that matter. A Working Group established at the 1996 session of ILC adopted a set of 22 draft articles on international liability which ILC submitted to the General Assembly for comments.

73. There are several international legal instruments recently negotiated or currently under negotiation. The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment,[62] a regional instrument with a limited number of signatories, deals with civil liability for environmental damage, including the provision of national legal remedies. The 1996 Protocol to the London Dumping Convention states, in article 15: "In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, the Contracting Parties undertake to develop

procedures regarding liability arising from the dumping or incineration at sea of wastes or other matter." Article 14 (2) of the Convention on Biological Diversity provides that: "The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter."

74. The International Conference on Hazardous and Noxious Substances and Limitation of Liability, convened by the International Maritime Organization, adopted in May 1996 the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal[63] envisages elaboration of a liability protocol. Some specific areas under current consideration in international forums are liability and compensation for environmental damage resulting from military activities (within the United Nations Compensation Committee) and safe management of transboundary movements of hazardous wastes.

National implementation and examples

75. Principle 13 is reflected in general liability provisions and in stipulations for specific environmental liability. In the past five years some countries included liability regulations in environmental legislation - for example, Lithuania, in the Land Act of 1994, which provides for liability, including criminal liability, of land-users for damage to the environment.[64] In Chile a constructive liability for any environmental damage caused as a result of a breach of environmental quality standards, emission standards or general rules governing the protection, preservation or conservation of the environment has been adopted.[65] The Finnish Act on Compensation for Environmental Damage 1994 applies to damage caused, inter alia, by pollution of soil, water, air, noise, and radiation.[66]

76. National courts occasionally confirm environmental liability. However, in most cases the decision is based on general liability rules - for instance, on common-law tort actions. The Indian Environmental Tribunal Act established a tribunal and enacted rules on compensation for death of, or injury to, a person and damage to property and environment.[67]

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

International developments

77. Principle 14 addresses the danger that substances and activities with potential to harm human health and the environment may be transferred or relocated to another State. In a context where it is thought that economic incentives favour relocation or transference to States without adequate protection, the principle establishes a norm of international cooperation to

discourage or to prevent such relocation or transference and to ensure that any relocation or transference is environmentally safe and done with prior informed consent. At a minimum, the principle requires prior informed consent of the importing State or State of relocation and imposes a duty on the originating State to ensure that the State to which the hazardous activity or substance is to be transferred has the appropriate capacity to minimize the risks. As a principle of cooperation, it further requires that if a State chooses to ban or restrict the importation of hazardous substances or the translocation of hazardous activities, the ban or restriction should be respected by other States.

78. Those international instruments that treat the non-transference of hazardous activities are often voluntary codes of conduct addressed directly to private parties, such as multinational corporations, and not standards of conduct for States. However, principle 14 is included in article 1114 of the 1992 North American Free Trade Agreement, and the duty to non-transference also underlies a number of pre-Conference instruments, such as article 195 of UNCLOS; the Basel Convention; and the Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, hereinafter referred to as the Bamako Convention.[68] Further, principle 14 is implied in the FAO International Code of Conduct on the Distribution and Use of Pesticides and in the London Guidelines for the Exchange of Information on Chemicals in International Trade (UNEP/GC.14/17, annex IV).

National implementation and examples

79. The principle of transboundary cooperation is embodied in the legislation of certain countries, in particular regulations relating to the transfer of hazardous substances or dangerous activities.[69] Some countries have laws prohibiting the import of toxic and hazardous substances (e.g., Nicaragua and Romania) whereas others, for instance, the United States, ban the export of toxic and hazardous materials. Another approach was taken by Poland and the Ukraine which concluded a bilateral agreement banning any export and import of hazardous waste from and to each other.[70]

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

International developments

80. Principle 15 codified for the first time at the global level the precautionary approach, which indicates that lack of scientific certainty is no reason to postpone action to avoid potentially serious or irreversible harm to the environment. Central to principle 15 is the element of anticipation, reflecting a requirement that effective environmental measures need to be based

upon actions which take a long-term approach and which might anticipate changes on the basis of scientific knowledge.

81. Incorporation of the precautionary approach can be found in various international legal instruments. For example,[71] the 1995 Agreement on Fish Stocks adopts the precautionary approach in article 6, and its article 5 (c) states that the application of the precautionary approach is one of the general principles of the Agreement; see also annex II to the Agreement, "Guidelines for the application of precautionary reference points in conservation and management of straddling fish stocks and highly migratory fish stocks". The precautionary approach is also included in the ninth preambular paragraph of the Convention on Biological Diversity; in article 3.3 of the Convention on Climate Change; and in annex II, article 3 (3) (c), of the Convention for the Protection of the Marine Environment of the North-East Atlantic.[72] The 1996 Protocol to the London Dumping Convention states, in article 3.1: "In implementing this protocol, Contracting Parties shall apply a precautionary approach to environmental protection ... when there is reason to believe that wastes or other matter introduced in the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects". In its second preambular paragraph, the evolution within the London Convention towards approaches based on precaution and prevention is noted. The precautionary principle is one of the bases for community policy on the environment of the European Union.[73]

82. Several codes which include the precautionary approach have been developed, inter alia, the 1994 Code of Practice on the Introduction and Transfer of Marine Organisms, by the International Council for the Exploration of the Seas; Guidelines for Preventing the Introduction of Unwanted Aquatic Organisms and Pathogens from Ships' Ballast Water and Sediment Discharges, by IMO; and FAO's Guidelines on the Precautionary Approach to Capture Fisheries and Species Introduction.[74]

83. The precautionary principle has been invoked before the International Court of Justice.[75] Judge Weeramantry in his opinion dissenting from the Order of the Court of 22 September 1995 concluded that the precautionary principle was gaining increasing support as part of the international law of the environment.

National implementation and examples

84. The precautionary approach is widely accepted as a fundamental concept of national environmental laws and regulations in order to protect the environment.[76] It is elaborated, for instance, in the Water Law and Planning Law of Israel,[77] in the Environmental Protection Act of the Czech Republic,[78] and is included in numerous draft environmental laws currently under consideration - for example in the Pakistan draft environmental protection act of 1996.

85. The precautionary approach is also increasingly applied in court decisions - for example, in a decision of the Land and Environment Court of New South Wales, Australia, in which the Court stated that although there had been express references to what is called the "precautionary principle" since the 1970s, international endorsement had occurred only in recent years. Indeed, the

principle had been referred to in almost every recent international environmental agreement. As a result, the Court upheld the appeal by the applicant and refused a license.[78] A number of cases have been built on and approved this decision since.[79]

86. In 1994, the Supreme Court of Pakistan quoted principle 15, holding that it seemed reasonable to take preventive measures straight away instead of maintaining the status quo because there was no conclusive finding on the effect of electromagnetic fields on human life.[80]

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

International developments

87. Principle 16 on internalization of costs includes what has become known as the "polluter pays" principle. According to it, it is important for the environmental costs of economic activities, including the cost of preventing potential harm, to be internalized rather than imposed upon society at large. It was developed by the Organisation for Economic Cooperation and Development (OECD) in the 1970s[81] in an effort to ensure that companies paid the full costs of controlling pollution and were not subsidized by the State. It was meant to apply within a State, and not between States. As a goal of domestic policy, it has been realized only partially in practice. Principle 16 brings the polluter pays approach outside of a strictly developed country context. Further, it is closely related to the international trade regime.

88. Since 1972, the polluter pays principle has gained increasing acceptance. Some recent international instruments that include it are: the Pan-European Biological and Landscape Diversity Strategy (1995), which avers that the cost of measures to prevent, control and reduce damage shall be borne by the responsible party, as far as possible and appropriate; and the 1996 Protocol to the London Dumping Convention, which states that the polluter should, in principle, bear the cost of pollution. The principle has also been reiterated by the Commission on several occasions.[82]

National implementation and examples

89. The use of economic instruments in the context of environmental protection has notably gained more attention in national legislation. While developed countries have implemented various economic instruments for several years, developing countries and countries with economies in transition are beginning to incorporate economic instruments into their national legislation. Among economic instruments used in national laws and regulations are deposit/refund schemes, pollution fines, eco-management systems, and eco-labelling systems.[83]

In order to complement environmental regulations, voluntary agreements between industry and government have been negotiated in several developed countries.

90. The polluter pays principle is a guiding concept for many legislators for designing effective national environmental laws and regulations. Since it was introduced in environmental policies in the late 1960s, it has been implemented by various means, ranging from pollution charges, process and product standards, to systems of fines and liabilities. In most States, the polluter pays principle is established as a direct obligation for citizens and companies included in general environmental protection regulations which are specified by provisions in sectoral laws.[84]

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

International developments

91. Principle 17 refers to environmental impact assessment (EIA) explicitly at the national level. On the international level some noteworthy developments have taken place. Various regional conventions reflect the obligation to undertake transboundary environmental impact assessments. For example, the 1991 United Nations/ECE Convention on Environmental Impact Assessment in a Transboundary Context[85] is specifically recognized in, for example, the Final Declaration of the Ministerial Meeting of the Oslo and Paris Commissions for the Prevention of Marine Pollution (September 1992), the Ministerial Declaration on Cooperation in the Barents Euro-Arctic Region (January 1993) and the Nuuk Declaration on Environment and Development in the Arctic (September 1993).[86] The Convention specifies the duties of Parties with regard to the transboundary impact of proposed activities and procedures for their implementation, and it provides procedures, in a transboundary context, for the consideration of environmental impacts in decision-making procedures.

92. As a national instrument, article 14 of the Convention on Biological Diversity requires parties "as far as possible and as appropriate" to "introduce appropriate procedures" requiring environmental impact assessment of proposed projects that are "likely to have significant adverse effects on biological diversity". The Pan-European Biological and Landscape Diversity Strategy (1995) includes the principle of avoidance, which is defined as the introduction of appropriate procedures requiring environmental impact assessment of projects that are likely to have significant adverse effects on biological and landscape diversity, with a view to avoiding such effects and, where appropriate, allow for public participation in such procedures.

93. Judge Weeramantry, in his opinion dissenting from the Order of the International Court of Justice of 22 September 1995, stated that the principle of environmental impact assessment was gathering strength and international acceptance and had reached a level of general recognition such that the Court should take notice of it.

National implementation and examples

94. Environmental impact assessment (EIA) has probably become the most effective and practical tool to support the implementation of sustainable development. Since it was introduced in the United States more than 25 years ago,[87] over 70 per cent of the countries have adopted its informal guidelines or mandatory regulations, applicable not only to public projects but also as a direct obligation of citizens. In addition, in many countries informal procedures of impact assessment for governmental activities have been developed. EIA is also widely accepted as a mechanism for public participation in planning processes and decision-making and a tool to provide information and data regarding projects and other activities.

95. Some of the numerous examples of recently adopted national laws providing for environmental impact assessment procedures are the Environment Code of Burkina Faso,[88] the Environment Protection Act of the Seychelles,[89] and the Finnish Act on Environmental Impact Assessment Procedure.[90] Further, in several countries, the judiciary had to deal with EIA procedures. In some cases, courts rejected permits for projects because either no EIA was undertaken or it proved to be inadequate. In a decision regarding the construction of a dam, the Canadian Supreme Court stated that the scope of an environmental assessment also has to take into account the environmental effects of the construction beyond the borders of Canada.[91]

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so affected.

International developments

96. Emergency notification allows affected parties the greatest possible opportunity to prepare for and mitigate potential damage. Emergency notification provisions are critical components of international approaches to, inter alia, oil spills, industrial accidents, and nuclear accidents. See, for example, articles 198 and 199 of UNCLOS and article 14 (c) of the Convention on Biological Diversity. Article 8 of the 1996 Protocol to the London Dumping Convention states that a Contracting Party may issue a permit for certain exceptional cases, "in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected ...". The Conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency, both adopted in 1986, have increased the number of their Parties - to 76 and 72, respectively.

National implementation and examples

97. The principle of emergency notification is embodied in some national laws, most of which implement international conventions as noted above. In March 1993, Belgium, Germany, Luxembourg, and the Netherlands agreed on a uniform system for information exchange and warning procedures with regard to high-level concentrations of ozone.[92]

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

International developments

98. States planning to conduct activities that may harm the environment or natural resources of another State should enter into good faith consultations over a reasonable time in an effort to minimize the transboundary environmental impacts. Consultation implies at least an opportunity to review and discuss a planned activity that may potentially cause damage. Increasingly, consultation is being institutionalized at the international level, either through existing international bodies, such as the Nordic Council, the European Council and the United Nations system, or through new institutions created in the framework of specific environmental conventions.

99. For example, article 14 (d) of the Convention on Biological Diversity and articles 7-10 of the Convention on Climate Change outline the consulting and decision-making authority of the Conference of the Parties of each Convention and establish various subsidiary bodies with advisory functions. Such institutions are critical for building confidence over the long term and for providing a mechanism for discussing and resolving potential disputes in the field of sustainable development. The Convention on Nuclear Safety[93] states in article 16.2 that each Contracting Party shall take the appropriate steps to ensure that, insofar as it is likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.

National implementation and examples

100. Reference to the principle of prior consultation can be found in a few national laws and regulations. In Gambia, for example, the 1994 Act on Hazardous Chemicals and Pesticides Control and Management contains a provision that international notification schemes relating to chemicals and pesticides, including the prior informed consent procedures, are to be implemented.[94] Some other examples of national legal implementation of the principle of prior consultation are directly linked to regulations regarding environmental impact assessment procedures.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

International developments

101. Section K of the 1995 Beijing Platform for Action is on women and the environment. It addresses several principles of the Rio Declaration (e.g., principles 1 and 5), and contains three strategic objectives requiring action, including the active involvement of women in environmental decision-making at all levels. Paragraph 251 states that "Sustainable development will be an elusive goal unless women's contribution to environmental management is recognized and supported".

102. Since 1992, there has been a substantial increase in the number of ratifications of the Convention on the Elimination of All Forms of Discrimination against Women, which now has almost global acceptance (154 parties as of January 1997). However, the large number of reservations to the Convention undermines its universal application.

103. In the Desertification Convention, preambular paragraph 20 stresses the important role played by women in regions affected by desertification and/or drought ... and the importance of ensuring the full participation of both men and women at all levels in programmes to combat desertification and mitigate effects of drought. Preambular paragraph 10 of the Convention on Biological Diversity recognizes the vital role that women play in the conservation and sustainable use of biological diversity and affirms the need for the full participation of women at all levels of policy-making and implementation.

104. Principle 20 has been elaborated upon in chapter 24 of Agenda 21. Paragraph 26 (o) of the 1995 Copenhagen Declaration recognized that "empowering people, particularly women, to strengthen their own capacities is a main objective of development and its principal resource. Empowerment requires the full participation of people in the formulation, implementation and evaluation of decisions ...".[95] Paragraph 18 of the Vienna Declaration, adopted by the World Conference on Human Rights, states that the full and equal participation of women in political, civil, economic, social and cultural life, are priority objectives of the international community.[96]

National implementation and examples

105. Principle 20 is mostly implemented through civil rights laws and related laws which in some instances provide for legal redress. Reference to the principle is made in almost all constitutions.

106. The principle of the integration of women into decision-making processes for sustainable development can be found in only a few legislative documents on the national level. However, it is reflected in general provisions regarding participation in decision-making processes and in many national and sub-national development plans.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

International developments

107. In the international legal field, developments regarding principle 21 are mainly aimed at the protection of youth and children, rather than enabling mobilization to forge a global partnership. The most important document in this respect is the Convention on the Rights of the Child.[97] On 29 and 30 September 1990, the World Summit for Children took place. The 1996 Secretary-General's report on progress at mid-decade on implementation of General Assembly resolution 45/217 on the World Summit for Children (A/51/526) states that the Convention represented a historic landmark in the international rise of the children's cause. The Summit adopted the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for its implementation,[98] identifying seven major goals relating to the survival, health, nutrition, education and protection of children for fulfilment by the year 2000, and a further 20 supporting goals.

108. The Vienna Declaration urges universal ratification and effective implementation of the Convention on the Rights of the Child and also states that in all actions concerning children, the views of the child should be given due weight. In paragraph 7 of the 1996 Istanbul Declaration, States agree to ensure the effective participation of youth in political, economic and social life.

National implementation and examples

109. Principle 21 is mostly implemented through civil rights laws. Reference to the principle is made in almost all constitutions.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

International developments

110. Indigenous peoples have unique cultures based on natural resources which have integrated various aspects of sustainability. Evolving standards in international law require the recognition of the integrated rights of indigenous peoples - for example, human rights, land and resource rights, intellectual and cultural property rights and rights to manage the environment and natural resources. The International Labour Organization has adopted various conventions and resolutions on indigenous matters. Principle 22 finds its further elaboration in chapter 26 of Agenda 21.

111. The vital role of indigenous people is recognized in the preambular paragraph 12 of the Convention on Biological Diversity, and is further detailed in its articles 8 (j), 10 (c), and 17.2. Article 8 (j) states that the Contracting Party shall: "subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles ... and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices". The 1995 Agreement on Fish Stocks requires States to take into account in the establishment of conservation and management measures the need to ensure access to fisheries by indigenous people of developing States, particularly small island developing States.

112. The Nuuk Declaration on Environment and Development in the Arctic States, in principle 7: "We recognize the special role of indigenous peoples in environmental management and development in the Arctic, and of the significance of their knowledge and traditional practices, and will promote their effective participation in the achievement of sustainable development in the Arctic".[86] The Forest Principles contain various references to recognition of traditional or indigenous rights.[99]

113. On 10 December 1992, the General Assembly declared 1993 the International Year of the Indigenous Populations. The United Nations Working Group on Indigenous Populations has prepared a draft universal declaration of the rights of indigenous peoples. The Vienna Declaration, in paragraph 20, reaffirms the commitment of the international community to the economic, social and cultural rights of indigenous peoples and their enjoyment of the fruits of sustainable development. It further declares that States should ensure their full and free participation in all aspects of society and should recognize their value and diversity. See also paragraph 26m of the 1995 Copenhagen Declaration.

National implementation and examples

114. The knowledge of local communities and the participation of indigenous people in decision-making for sustainable development is crucial for the protection of local ecosystems. Several national laws and regulations contain provisions that acknowledge, for example, property rights which indigenous people exercise over their land and waterways or which enable indigenous people to take part in decision-making processes.[100] Their involvement in environmental impact assessment procedures is another form of participation in decision-making for sustainable development.

115. Recognition and support for the identity, culture and interests of indigenous people is regularly embodied in general provisions that are embedded in national constitutions or general statements of environmental and developmental policies. Moreover, some national sectoral regulations acknowledge this principle. One example is the Principles of the Forest Legislation of the Russian Federation 1993, which call for the elaboration of specific forests regulations for areas important to indigenous people.[101]

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

International developments

116. Principle 23 has been reiterated in several resolutions adopted by the General Assembly - for example, resolutions 48/46, 48/47 and 49/40. The first reaffirms in its sixth preambular paragraph "that the natural resources are the heritage of the indigenous populations of the colonial and Non-Self-Governing Territories". Resolution 50/129 reaffirms in paragraph 4 "the inalienable right of the Palestinian people and the population of the occupied Syrian Golan to their natural and all other economic resources, and regards any infringement thereupon as illegal".

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

International developments

117. Principle 24 can be read in conjunction with chapter 39, paragraph 6, of Agenda 21, which states: "Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law". Methods and means of warfare are not unlimited. Environmental protection in times of armed conflict is difficult and complex, because warfare is inherently harmful to the environment. As such, international developments are focused on limiting rather than eliminating environmental damage. Since 1992, various treaties related to warfare have been negotiated and/or entered into force, most notably arms control treaties.

118. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction[102] aims to ensure that means and methods of warfare which exceed the threshold of permissible harm are not available to the combatants. The articles also refer directly to the environment - for example, article IV.10: "Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment".[103] See also Protocol II, revised in 1995, and Additional Protocol IV of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The comprehensive nuclear-test-ban treaty, adopted by the General Assembly on 10 September 1996, in its tenth preambular paragraph notes "the views expressed that this Treaty could contribute to the protection of the environment ...". Other treaties are currently under discussion.[104]

119. The International Committee of the Red Cross has been working for years on the issue of armed conflict and the environment. It is developing guidelines for military manuals and instructions on the protection of the environment in times of armed conflict. Several of its provisions are found in existing international customary or treaty law.

120. The International Court of Justice, in its 1996 advisory opinion on the legality of the threat or use of nuclear weapons, was of the view that States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives and that respect for the environment is one of the elements to consider in assessing whether an action is in conformity with the principles of necessity and proportionality. The Court supported this approach, inter alia, by quoting principle 24 of the Rio Declaration.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

International developments

121. As recognized in the last preambular paragraph of the Rio Declaration, the integral and interdependent nature of the Earth needs to be acknowledged. Sustainable development is an integrative concept; the interdependency stressed in principle 25 refers to the necessity of integration, which forms the backbone of the concept of sustainable development. Integration is the underlying theme of the Rio Declaration and Agenda 21, where it is explicitly addressed in chapter 8.

122. The Charter of the United Nations is premised on the idea incorporated in principle 25. Chapter IX of the Charter is devoted to international economic and social cooperation, which should also include environmental cooperation. Article 55 includes the pursuance of "development" among the goals of international economic and social cooperation, and in Article 56, States pledge themselves to promote development.

123. The interdependent approach is reiterated in the final documents of major international conferences, such as the 1996 Istanbul Declaration, which states in paragraph 3: "Recent United Nations world conferences, including, in particular, the United Nations Conference on Environment and Development, have given us a comprehensive agenda for the equitable attainment of peace, justice and democracy built on economic development, social development and environmental protection as interdependent and mutually reinforcing components of sustainable development", and the 1995 Copenhagen Declaration.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

International developments

124. The general principle of peaceful settlement of disputes is one of the fundamental principles enshrined in the Charter of the United Nations. Regarding dispute settlement in the field of environment and development,[105] a number of significant developments have taken place, including the decision in 1993 of the International Court of Justice to create a Chamber for Environmental Matters, established under article 26(1) of the Statute of the Court.

125. Indeed, most environmental treaties stipulate that the parties involved should first aim to resolve disputes through negotiation. If this is unsuccessful, many treaties provide for further arrangements which may involve the assistance of third parties. Some treaties provide that the dispute will be submitted to either arbitration or the International Court of Justice, if negotiations have proven unsuccessful. For example, the Convention on Climate Change provides, in article 14.1: "In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek settlement of the dispute through negotiation or any other peaceful means of their own choice". The Convention on Biological Diversity states in article 27.1 that in the event of a dispute, the parties concerned "shall seek solution by negotiation". Paragraph 2 of the same article creates the possibility for parties, in case of non-agreement by negotiation, to request mediation or seek the good offices of a third party. See also part five of the North American Agreement on Environmental Cooperation.[106]

126. Although in many of these cases the dispute settlement clauses are optional, there is a growing trend towards compulsory dispute settlement. Part XV of UNCLOS makes it obligatory for State Parties to settle their disputes concerning the interpretation and application of the Convention by peaceful means. Two recent international instruments have applied the dispute settlement provisions of UNCLOS: part VIII of the 1995 Agreement on Fish Stocks, and article 16 of the 1996 Protocol to the London Dumping Convention. In both cases, the UNCLOS procedure is applied whether or not the Parties to the Agreement or Protocol are also Parties to UNCLOS. In October 1996 the International Tribunal for the Law of the Sea was inaugurated in Hamburg. The Tribunal will be called upon to settle disputes arising out of interpretation or application of UNCLOS. It has, through its Seabed Disputes Chamber, exclusive jurisdiction over conflicts concerning the resources of the deep seabed beyond the limits of national jurisdiction.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

International developments

127. Principle 27 reaffirms the basic components of the Rio Declaration. In order to achieve sustainable development, States and people should cooperate in

the implementation of the principles and in the further development of international law in the field of sustainable development.[107] See also preambular paragraph 3 of the Rio Declaration, which states as the overall goal the establishment of a "new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of society and people". See further chapter 1 of Agenda 21.

128. The concept of cooperation is adopted in other major declarations - for example, in the 1996 Istanbul Declaration, paragraph 12: "We adopt the enabling strategy and the principles of partnership and participation as the most democratic and effective approach for the realization of our commitments". International law in the field of sustainable development reflects the balanced approach of the Rio Declaration and the other instruments adopted at the United Nations Conference on Environment and Development between environmental, economic and developmental law, and thus between environmental protection and economic and social development.

Notes

References to International Legal Materials are cited as follows: volume number, ILM, page number.

[1] 31 ILM 818.

[2] 31 ILM 848; A/AC.237/18 (Part II)/Add.1.

[3] Further, the Governing Council of UNEP is invited "to include in its submission to the special session, information and views on ways to address in a forward-looking manner, national, regional and international application of these principles and the implementation of Agenda 21 in the interrelated issues of the environment and development".

[4] Documents used extensively: "Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development", held in Geneva, Switzerland, 26-28 September 1995, organized by the Department for Policy Coordination and Sustainable Development, United Nations Secretariat, and submitted to the Commission at its fourth session as background paper No. 3; Report of the International Environmental Conference on Codifying the Rio Principles in National Legislation, The Hague, 22-24 May 1996, organized by the Netherlands Ministry of Housing, Spatial Planning and the Environment (Publikatiereeks milieubeheer, No. 1996/4); "Compilation of questionnaires, April 1996", distributed at the International Environmental Conference on Codifying the Rio Principles in National Legislation. Also, Draft International Covenant on Environment and Development, elaborated by the Commission on Environmental Law of the IUCN/World Conservation Union, in cooperation with the International Council of Environmental Law, and launched at the United Nations Congress on Public International Law, New York, 13-17 March 1995; Final Report of the Expert Group Workshop on International Environmental Law Aiming at Sustainable Development (UNEP/IEL/WS/3/2); National Experiences on Codifying the Rio Principles in National Legislation (Publikatiereeks milieubeheer No. 1996/2); Konrad Ginther, Erik Denters and Paul J. I. M. de Waart, eds.,

Sustainable Development and Good Governance (The Hague, Martinus Nijhoff, 1995). Philippe Sands, Principles of International Environmental Law, vol. I, Frameworks, Standards and Implementation (Manchester, Manchester University Press, 1995); and David A. Wirth, "The Rio Declaration on Environment and Development: Two steps forward and one back, or vice versa?" in Georgia Law Review, vol. 29 (1995), pp. 599-653.

[5] Entered into force on 26 December 1996. 33 ILM 1,332.

[6] See A/CONF.164/37.

[7] Entered into force on 16 November 1994. 21 ILM 1,261. Also, United Nations publication, Sales No. E.83.V.5.

[8] As revised by the Agreement signed in Mauritius on 4 November 1995. See The APC-EU Courier, No. 155 (January-February 1996).

[9] See A/CONF.171/13/Rev.1, chap. I, resolution 1, annex, chap. II.

[10] See A/CONF.165/14, chap. I, resolution 1, annex I.

[11] See E/CN.4/Sub.2/1994/9 of 6 July 1994.

[12] Recent examples are the Constitution of the Ukraine, adopted 28 June 1996; Constitution of South Africa, adopted 8 May 1996; Constitution of Ethiopia, adopted 8 December 1994; Constitution of Argentina, adopted 23 August 1994.

[13] Supreme Court of the Philippines, Manila, 30 July 1993, Minors Oposa vs. Secretary of the Department of Environment and Natural Resources, G.R. No. 101083, reprinted in 33 ILM 173, 187 (1994).

[14] See Bureau of National Affairs, International Environment Reporter (Washington, D.C.), pp. 3:0101-33:0111, para. 2.

[15] However, note the written statement by the United States, which "does not, by joining consensus ... change its long-standing opposition to the so-called 'right to development'". For the United States, development "is not a right ... [it] is a goal we all hold". See A/CONF.151/26/Rev.1 (vol. II), chap. III, para. 16.

[16] E/CN.4/Sub.2/1994/9, paras. 49 and 68.

[17] General Assembly resolution 41/128, annex.

[18] A/CONF.157/24 (Part I).

[19] General Assembly resolution 48/141, para. 3 (c); see further, in particular, para. 4 (c).

[20] A/CONF.177/20, chap. I, resolution 1, annex II, inter alia, paras. 42, 216 and 231.

[21] Adopted at the World Summit for Social Development, Copenhagen, 6-12 March 1995 (A/CONF.166/9, chap. I, resolution 1, annex I).

[22] See Constitutions of the Countries of the World, A. P. Blaustein and G. H. Flanz, eds. (Dobbs Ferry, Oceana).

[23] Art. 6 (b); and preambular paras. 9 and 22, and art. 2.2 respectively.

[24] M. Bothe and C. Schmidt, "Internationalization of natural resource management in Yearbook of International Environmental Law, vol. IV (1993), pp. 88, 96.

[25] Adopted on 1 November 1995 at the Intergovernmental Conference to Adopt a Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (A/51/116, annex I, appendix II, fifth preambular paragraph).

[26] A/CONF.177/20, chap. I, resolution 1, annex II, paras. 17, 44, 47-57, and 246.

[27] Food and Agricultural Legislation, vol. 42 (1993), p 195.

[28] See also arts. 4.4, 4.5, 4.6 and 4.7.

[29] See also preambular para. 16.

[30] See also chap. 2 of Agenda 21.

[31] See, inter alia, Desertification Convention, preambular para. 17, art. 12; Forest Principles, principle 10; 1996 Istanbul Declaration, para. 10.

[32] The United States rejected an interpretation of principle 7 "that would imply a recognition or acceptance by the United States of any international obligations or liabilities, or any diminution in the responsibilities of developing countries" (A/CONF.151/26/Rev.1 (Vol. II), chap. III, para. 16.

[33] See, for example, arts. 16(2,3); 17(1); 18(2); 19(1,2); and 20(1,2,3).

[34] Adopted 7 November 1996.

[35] See, e.g., Title I (arts. 33-45) and Protocol 10 on sustainable management of forest resources of the Fourth APC-EEC Convention of Lomé, as revised by the Agreement signed in Mauritius.

[36] E/1995/32, para. 31.

[37] For example, United States of America, Amendment to the Clean Air Act 1993.

[38] See report of the Secretary-General on chap. 4 of Agenda 21 (E/CN.17/1997/2/Add.3).

[39] E/CN.17/1996/5/Add.1.

[40] See, e.g., European Union, Commission regulation 880/92 of 23 March 1992 on a Community eco-label award scheme. Official Journal of the European Communities, 1992, series L 99, p. 1.

[41] Cf. European Union, "Eco-management and audit scheme", Commission regulation 1836/93 of 29 June 1993, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme. Official Journal of the European Communities, 1993, series L 168, p. 1.

[42] Germany, Act for Promoting Closed Substance Cycle Waste Management and Ensuring Environmentally Compatible Waste Disposal (Kreislaufwirtschafts- und Abfallgesetz), art. 1 of Waste Avoidance, Recovery and Disposal Act of 27 September 1994, Federal Law Gazette Part 1, No. 66, of 6 October 1994. Cf. European Union Council directive 91/156/EEC of 18 March 1991, amending directive 75/442/EEC on waste. Official Journal of the European Communities, 1991, series L 78, p. 32. Council directive 91/689/EEC on hazardous waste. Official Journal of the European Communities, 1991, series L 377, p. 20.

[43] See report of the Secretary-General on chap. 34 of Agenda 21 (E/CN.17/1997/2/Add.24).

[44] Cf., inter alia, Japan, Law on Temporary Measures to Promote the Rational Use of Energy and the Utilisation of Recycled Resources by Business; Greece, Law No. 2244/94 enhancing the national production and installation of small solar water-heating systems through tax-related incentives. In Indonesia, a programme for pollution control, evaluation and rating provides, among other measures, for the promotion of the use of clean technologies (Ministerial Decree No. KEP-35/MNLH/7 [1995]).

[45] Council directive 96/61, Official Journal of the European Communities, 1994, series L 330, art. 10 and annex IV; in regard of integrated pollution prevention and best available techniques and technologies. Cf. also earlier application of best available technologies in, e.g., France, the United Kingdom, and Denmark.

[46] E.g., eco-funds in Hungary and Poland. See also various funds in the European Union - e.g., LIFE, established by Council regulation 1973/92 (Official Journal of the European Communities, 1992, series L 206); Tunisia, Fund for Decontamination; Republic of Korea, Fund for Prevention of Environmental Pollution; also mostly privately managed "green (investing) funds" in the United Kingdom and the United States.

[47] For example, para. 23.2 provides that "individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures".

[48] 1989 ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries, arts. 6-7; Convention on Biological Diversity preamble; Agenda 21, chap. 26.

[49] Convention on the Elimination of All Forms of Discrimination against Women, art. 7 (b), on the right to participate in formulating government policy, and art. 14.2 (a), the right to participate in development planning; Convention on Biological Diversity preamble; Agenda 21, chap. 24; 1995 Beijing Platform for Action, para. 253 (a).

[50] See Agenda 21, paras. 27.10 and 8.18.

[51] Art. 4.1 (i); arts. 12.9 and 12.10.

[52] On the status of non-governmental organizations under various conventions, see, e.g., Convention on Biological Diversity, art. 23(5); Convention on Climate Change, arts. 7.2.(l), 7.6; Desertification Convention, art. 22(7).

[53] Colombia, Law 99 of 28 December 1993; cf. C. Mora, in "Compilation of questionnaires, April 1996", distributed at the International Environmental Conference on Codifying the Rio Principles in National Legislation. Country report on Colombia.

[54] M. Damohorský, in "Compilation of questionnaires" (see note 53). Country report on the Czech Republic.

[55] Part XII, sect. 5 (arts. 207-212) obliges States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment on the basis of internationally agreed rules and standards.

[56] Cf., inter alia, Croatia, Environmental Protection Act (27 October 1994); Hungary, Act LIII of 1995 on General Rules of Environmental Protection; Japan, Basic Environmental Law (12 November 1993); Maldives, Environmental Protection and Preservation Act (April 1993); Seychelles, Environmental Protection Act (13 September 1994). For additional examples of framework laws for environmental management in developing countries and countries with economies in transition, see Peigi Wilson and others, "Emerging trends in national environmental legislation in developing countries", appendix I, in UNEP's New Way Forward: Environmental Law and Sustainable Development, Lal Kurukulasuriya, ed. (Nairobi, UNEP, 1995).

[57] Examples of this type of legislation are forest protection acts, animals conservation acts, water resources act, acts for the establishment of protected land areas and national parks, fisheries acts, and acts regarding public health and welfare.

[58] The North American Agreement on Environmental Cooperation, (see note 14) states in art. 1 (e), as one of the objectives of the agreement, (to) avoid creating trade distortions or new trade barriers.

[59] See, e.g., the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (12 ILM 1085) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (28 ILM 657); and the Montreal Protocol on Substances that Deplete the Ozone Layer (26 ILM 155).

[60] WTO, Committee on Trade and Environment (WT/CTE/W/40), 7 November 1996. In the report reference is made to the importance of a number of the principles of the Rio Declaration.

[61] See "Report of the International Law Commission at its forty-eighth session" (A/51/10 and Corr.1).

[62] Adopted at Lugano, 21 June 1993. 32 ILM 1228.

[63] Adopted 22 March 1989. 28 ILM 657.

[64] Lithuania, arts. 34 and 53 of the Land Act, 26 April 1994; cf. FAO, Food and Agricultural Legislation, vol. 44 (1995), p. 56.

[65] Chile, Act No. 19.300, adopting the Act Governing the General Foundations of the Environment of 1 March 1994, Diario Oficial de la República de Chile, No. 34.810 of 9 March 1994, pp. 3-10.

[66] Finland, Act on Compensation for Environmental Damage (SSK 19 August 1994/737), adopted on 8 August 1994.

[67] Indian National Environment Tribunal Act, 1995, chaps. II and III (Act 27 of 1995).

[68] Adopted 30 January 1991. 30 ILM 773 (Agreement) and 31 ILM 163 (annexes).

[69] For example, regulation 259/93 of 1 February 1993 on the supervision and control of shipments of wastes within, into and out of the European Community, Official Journal of the European Communities, 1993, series L 30, p. 1.

[70] Cf. Iwona Rummel-Bulska, "Transboundary movement of hazardous waste, Yearbook of International Environmental Law, vol. 5 (1994), p. 221.

[71] The precautionary has been included in many other international legal instruments. See also, inter alia, para. 5 of the Washington Declaration on Protection of the Marine Environment from Land-based Activities; para. 253 (d) of the 1995 Beijing Platform for Action; para. 10 of the 1996 Istanbul Declaration; and the strategic principles of the Pan-European Biological and Landscape Diversity Strategy (1995).

[72] Adopted in Paris, 22 September 1992. 32 ILM 1069.

[73] The Treaty on European Union, signed at Maastricht on 7 February 1992, entered into force on 1 November 1993. 31 ILM 247.

[74] FAO Fisheries Technical Paper 350/1.

[75] New Zealand invoked the precautionary principle in support of its application to the International Court of Justice to review France's decision to recommence nuclear tests. Nuclear Tests Case (New Zealand v. France), request by New Zealand for an examination of the situation, 21 August 1995, at paras. 105-108. France replied that the legal status of the principle was "uncertain". ICJ, Verbatim Record (CR 95/20), 12 September 1995, p. 71.

[76] Cf. Treaty on European Union, (see note 73), art. 130r (2); Mexico, General Law for Environmental Protection and the Ecological Equilibrium 1988, art. 15, para. V.

[77] R. Laster, in Compilation of questionnaires (see note 53). Country report on Israel.

[78] Australia, New South Wales, Land and Environment Court, Leatch v. Director-General, National Parks and Wildlife Service and Shoalhaven City Council (23 November 1993); cf. Justice Paul Stein, "Advantages and disadvantages of codification from the perspective of legal administration in Australia", Report of the International Environmental Conference on Codifying Rio Principles in National Legislation, The Hague, 22-24 May 1996 (Publikatiereeks milieubeheer, No. 1996/4), pp. 35 ff.

[79] See, inter alia, Australia, New South Wales, Land and Environment Court, Alumino v. The Minister of Planning (22 August 1996); New Zealand, High Court, Greenpeace v. The Minister for Fisheries and Others (November 1995); but see United Kingdom of Great Britain and Northern Ireland, High Court of Justice Q.B., Regina v. Secretary of State for Trade and Industry ex parte Duddridge (3 October 1994), Env L R 151.

[80] Pakistan, Supreme Court, Ms. Shehla Zia and others v. WAPDA (12 February 1994), 46 PLD SC 693, at 710 (1994).

[81] See, inter alia, OECD documents C (72)128 and C (74)223.

[82] For example, at its third session, in addressing changing production and consumption patterns, the Commission stated that "[n]ational authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, as appropriate, taking into account the polluter-pays principle" (E/1995/32, para. 31).

[83] Cf. the reports of the Secretary-General on overall progress achieved since the United Nations Conference on Environment and Development on chaps. 4, 8, and 33 of Agenda 21 (E/CN.17/1997/2/Add.3, 7, and 23).

[84] For instance, in Poland, the Act on Environmental Protection (1980) and amendments, and the Geological and Mining Act (1994); Stanislaw Wajda, "Country report: Poland", Yearbook of International Environmental Law, vol. 5 (1994), pp. 372 ff.

[85] The Convention has 13 ratifications (January 1997) and needs 16 ratifications to enter into force. 30 ILM 802 (1991).

[86] See Yearbook of International Environmental Law, vol IV (1993), p. 687 ff.

[87] United States of America, National Environmental Policy Act (NEPA) of 1969.

[88] Burkina Faso, Act No. 002/94/ADP of 19 January 1994; cf. FAO, Food and Agricultural Legislation, vol. 44 (1995), pp. 440 ff.

[89] Seychelles, Environment Protection Act (13 September 1994), part IV.

[90] Finland, Act on Environmental Impact Assessment Procedure, Act No. 468 of 10 June 1994.

[91] Canadian Supreme Court, Quebec (Attorney General) vs. Canada (National Energy Board) [1994], 1 S.C.R. 159; see also decisions related to EIA of the European Court of Justice, e.g., Commission v. Germany [1995] ECR I-2189.

[92] U. Beyerlin and T. Barsch, "Transboundary environmental cooperation", Yearbook of International Environmental Law, vol. 4 (1993), pp. 108 ff.

[93] The Convention (INFCIRC/449) entered into force on 24 October 1996 and has 29 Contracting Parties (December 1996). It commits Parties to ensure the safety of land-based civil nuclear power plants, inter alia, by providing a legislative and regulatory framework.

[94] Gambia, Hazardous Chemicals and Pesticides Control and Management Act, 1994 of 24 May 1994. See The Gambia Gazette, Supplement, Act. No. 12 of 1994, pp. 1-43.

[95] See also para. 26 (s) and commitment 5.

[96] See A/CONF.157/24 (Part I), chap. III.

[97] Adopted by the General Assembly on 20 November 1989.

[98] A/45/625, annex.

[99] Preambular para. (c), principles 2 (b) and 2 (d), 5 (a), and 8 (f).

[100] See, for example, Mexico, Decree amending Article 27 of the Constitution of the Mexican United States of 3 January 1992. Diario Oficial de la Federación, No. 3 (6 January 1992), pp. 2-4.

[101] See articles 4 (s); cf. FAO, Food and Agricultural Legislation, vol. 44 (1995), pp. 214 ff.

[102] Adopted 13 January 1993, received sixty-fifth ratification 31 October 1996, will enter into force on 29 April 1997. 32 ILM 1993, pp. 804-872.

[103] See also arts. V.11 and VII.3.

[104] For example, the draft treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and the ocean floor and in the subsoil thereof.

[105] See also Agenda 21, chap. 39, paras. 39.3 (h) and 39.10.

[106] See UNEP/GC.18/23.

[107] See "Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development", supra note 4.